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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

JEFFREY L. DRYDEN,
Plaintiff,

vs.

JANITA FAEN; KAREN STRONG; JAMIE
DAVIDSON; PHILLIP BURNS; JEFF
WELLS; JAY SOUZA; ERIN FARRAR;
STEPHANIE MUSSER; JAMES KAIKIS;
each personally and in their official capacity;
OFFICE OF STUDENT CONDUCT, a unit
of the University of Nevada; and NEVADA
SYSTEM OF HIGHER EDUCATION,
Defendants.

CASE NO.: 2:14-cv-01625-GMN-NJK

**DEFENDANTS' MOTION TO EXTEND
TIME AND/OR APPROVE DEFENDANTS'
TIMING OF FILING OPPOSITIONS TO
PLAINTIFF'S MOTIONS FILED ON
SEPTEMBER 10, 2015**

[First Request]

Defendants, Juanita Fain (“**Fain**”), erroneously named “Janita Faen”, Karen Strong (“**Strong**”), Jamie Davidson (“**Davidson**”), Phillip Burns (“**Burns**”), Jeff Wells (“**Wells**”), and Erin Farrar (“**Farrar**”), individually and in their official capacity (“**Individually Named Defendants**”), and the State of Nevada ex rel. Board of Regents of the Nevada System of Higher Education, on behalf of the University of Nevada, Las Vegas (“**UNLV**”), erroneously named Office of Student Conduct and Nevada System of Higher Education, (collectively “**Defendants**”) by and through counsel, Debra L. Pieruschka, Esq., Assistant General Counsel, University of Nevada, Las Vegas, Office of General Counsel, hereby submits Defendants’ Motion to Extend Time and/or Approve Defendants’ Timing of Filing Oppositions to Plaintiff’s Motions Filed on September 10, 2015. **Dkt. #20, Dkt. #21, and Dkt. #22.**

1 This Motion is based on Fed. R. Civ. P. 6, Local Rule 6-1, Local Rule 6-2, the following
 2 Memorandum of Points and Authorities, the pleadings and papers on file herein, and any oral
 3 argument to be made at the hearing on this matter.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 Defendants seek approval of this Court to grant it an extension up to and including
 6 November 9, 2015, to file their Oppositions to a number of Plaintiff's Motion filed on September
 7 10, 2015 during a Court ordered stay. On August 5, 2015, Plaintiff served the individually named
 8 Defendants Burns, Fain, Strong, Davidson, Wells, and Farrar with the First Amended Complaint.
 9 On August 17, 2015, Plaintiff completed service of process on the Nevada System of Higher
 10 Education. **Dkt. #17**. Pursuant to Rule 12(a)(1), the Defendants had 21-days after being served
 11 with the summons and complaint to file its response. As such, the Individually Named Defendants
 12 response was due on or before August 26, 2015 and Defendant UNLV's response was due on or
 13 before September 6, 2015. FED. R. CIV. P. 12 (a)(A)(i).

14 On August 26, 2015, appearing for the first time in the matter, the Individually Named
 15 Defendants filed their Motion to Dismiss with this Court. **Dkt. #15**. Upon filing their Motion to
 16 Dismiss, Defendants' learned for the first time the Court had issued a stay in the matter. On
 17 September 11, 2015, the Court issued an order in which, it expressly stated that the case remained
 18 stayed pending resolution of the Court's Order to Show Cause. **Dkt. #23**. On October 15, 2015, the
 19 Court issued its Order Discharging Order to Show Cause and lifted the stay. **Dkt. #25**.

20 On September 10, 2015, Plaintiff filed a number of motions with the Court as follows:

- 21 (1) Plaintiff's Motion for Clarification Regarding Order Staying Case
 22 Entered on August 5, 2015 & Defendant's Motion to Dismiss Filed
 23 on August 27, 2015 [**Dkt. #20**];
- 24 (2) Plaintiff's Motion for Clarification Regarding Rule 15(a)(1)(B)
 and Leave to File And [sic] Amended Complaint [**Dkt. #21**]; and
- 25 (3) Plaintiff's Motion for Clarification Regarding Rule 15(a)(1)(B)
 26 and Leave to File And [sic] Amended Complaint [**Dkt. #22**]

27 The Court assigned a deadline of September 27, 2015 for Defendants to file a response. It is
 28 unclear from the Local Rules what the new deadline should have been for filing a response.

1 Because the original time has expired, Defendant UNLV files this present motion.

2 Under Rule 6(b)(1) permits a court, for good cause appearing, to extend the time to
3 complete an act, after the time has expired to do so, if a party files a motion demonstrating it failed
4 to act because of excusable neglect. FED. R. CIV. P. 6(b)(1)(B). Excusable neglect exists where a
5 party's failure to comply with a deadline was negligent. *See Lemoge v. United States*, 587 F.3d
6 1188, 1195 (9th Cir. 2009). There are at least four factors in determining whether neglect is
7 excusable: (1) the danger of prejudice to the opposing party; (2) the length of the delay and its
8 potential impact on the proceedings; (3) the reason for the delay; and (4) whether the movant acted
9 in good faith. *See Bateman v. U.S. Postal Serv.*, 231 F.3d 1220, 1223-24 (9th Cir. 2000) (*citing*
10 *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993)). The
11 determination of whether neglect is excusable is ultimately an equitable one, taking account of all
12 relevant circumstances surrounding the party's omission. *See Pioneer*, 507 U.S. at 395. This
13 equitable determination is left to the discretion of the district court. *See Pincay v. Andrews*, 389
14 F.3d 853, 860 (9th Cir. 2004).

15 Applying the *Pioneer* facts, this Court should grant Defendant UNLV's Motion to Extend
16 Time and/or Approve the Timing of Filing Oppositions to Plaintiff's Motions Filed on September
17 10, 2015 because it has demonstrated excusable neglect warranting such action. First, there is no
18 prejudice to Plaintiff because the delay was minimal because the Court only lifted the stay on
19 October 15, 2015, after the specified deadline and has no impact on the current judicial
20 proceedings and Plaintiff will have his opportunity to respond accordingly. Last, there was no bad
21 faith in the failure to timely file; it was just plain simple technical error.

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1 Based upon the foregoing, the Defendants respectfully request this Court grant its Motion
2 to Extend Time and deem Defendants Responses [**Dkt. #31, Dkt. #32, and Dkt. #33**] as timely.

3 DATED: NOVEMBER 9, 2015.

4 /S/ DEBRA L. PIERUSCHKA
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13 *Attorneys for Defendants*

14 IT IS HEREBY ORDERED that Defendants' Responses (ECF Nos. 31, 32, and 33) are
15 deemed as timely.

16 Dated this ¹⁸ day of November, 2015.

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18 Gloria M. Navarro, Chief Judge
19 United States District Judge
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